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FURTHER REPORT ON THE SITUATION OF HUMAN RIGHTS IN CROATIA PURSUANT TO SECURITY COUNCIL RESOLUTION 1019 (1995)

I. INTRODUCTION

The present report is submitted pursuant to paragraph 12 of Security Council resolution 1019 (1995) of 9 November 1995, by which the Council requested the Secretary-General to continue to inform it on a regular basis of measures taken by the Government of the Republic of Croatia to implement resolutions 1009 (1995) and 1019 (1995). These resolutions, inter alia, demanded that the Government of the Republic of Croatia respect fully the rights of the local Serb population in the former Sectors following Croatia's military operations, including their rights to remain, leave or return in safety, take urgent measures to put an end to all violations of international humanitarian law and human rights and investigate all reports of such violations so that those responsible for such acts be judged and punished. The resolutions furthermore condemned in the strongest possible terms all violations of international humanitarian law and of human rights in the territory of the former Yugoslavia and demanded that all concerned comply fully with their obligations in this regard. In its presidential statement of 8 January 1996, the Council also requested the Secretary-General to keep it regularly informed of the progress of measures taken by the Government of the Republic of Croatia to implement resolution 1019 (1995) and to report to it no later than 15 February 1996 (S/PRST/1996/2).

My last report on this issue (S/1995/1051), submitted on 21 December 1995, covered the period up to the end of November 1995. The present report considers further developments up to the end of January 1996.

The structure of United Nations operations in Croatia has changed substantially since the submission of my last report. The mandate of UNCRO was terminated by the Security Council as of 15 January 1996. As a result of this decision, all United Nations military units, and their accompanying civilian components, including UNCRO political and humanitarian officers and United Nations civilian police, have now departed from the former Sectors West, North and South in Croatia. The international community's ability to monitor the human rights and humanitarian situation in these areas has accordingly been drastically reduced. United Nations personnel responsible for this task are

currently limited to a small team of officers from the United Nations High Commissioner for Refugees (UNHCR) and two human rights officers from the Centre for Human Rights of the United Nations Secretariat, working in support of the Special Rapporteur and the Expert on Missing Persons. A small number of officials from the International Committee of the Red Cross (ICRC), monitors from the European Community Monitoring Mission and a few other persons working for international non-governmental organizations (NGOs), as well as representatives of local human rights groups, are also independently engaged in monitoring human rights.

Since my last report, there has also been a dramatic change in the former Sector East, where the Security Council by its resolution 1037 (1996) of 15 January 1996 authorized the creation of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), with responsibility, among other tasks, for monitoring human rights and humanitarian matters in that part of Croatia. The situation in former Sector East will not be addressed in the present report.

II. HUMAN RIGHTS VIOLATIONS AND THE RESPONSE OF THE GOVERNMENT

A. General human rights situation

Since Croatia's forcible recovery of control over those parts of its territory formerly known as Sector West in May 1995 and Sectors North and South in August 1995, I have referred in several reports to the human rights and humanitarian situations in those areas and to the responses given by the Government of Croatia. These subjects have also been considered in depth by the Special Rapporteurs of the Commission on Human Rights, first by Mr. Tadeusz Mazowiecki in his periodic report submitted on 5 July 1995 (S/1995/575) and more recently by his successor Mrs. Elisabeth Rehn, in her first report to the General Assembly, dated 7 November 1995 (S/1995/933). These reports provided accounts of large-scale violations of human rights in these areas, particularly against members of the local Serb population who chose to remain in the wake of Croatia's military operations. In my last report, I observed that violations of human rights continued to be reported to the end of November, albeit on a reduced scale.

Since the end of November 1995, the incidence of human rights violations, including acts of killing, arson and looting, committed in the former Sectors West, North and South has continued to decline. This appears to have been due to several factors. The initial emotion and quest for vengeance that were unchecked by the authorities in the months immediately following the military operations of last summer have now waned. This, in turn, has resulted in a sharp decrease in wanton killing and destruction of property. The vast scale of looting observed last summer and autumn has depleted the area of valuable personal property and thus the incidence of theft has greatly diminished. In addition, the human rights violations in the former Sectors last summer led the Security Council and various Governments to condemn in the strongest terms Croatia's failure to adequately protect the rights of the local Serb population. The Government of Croatia eventually responded with a series of measures

intended to protect its citizens' human rights, and these initiatives seem to have begun to have a positive effect.

The Government of the Republic of Croatia is, of course, aware of the Council's request to be kept informed on a regular basis of measures taken by it to implement resolutions 1009 (1995) and 1019 (1995). The present report takes into account a document titled "Report by the Government of the Republic of Croatia on the implementation of Security Council resolution 1019" (hereafter referred to as "report by the Government"), which was issued through the Ministry of Foreign Affairs on 28 January 1996.

Since 1 December 1995, there have been only isolated incidents of killings in the former Sectors, and ethnic motivation has been impossible to confirm in these cases. Since that same date no reports of arson and only sporadic reports of looting and harassment have been received from the former Sectors. In one case reported in Gavrinica, former Sector West, in late January 1996, two local Serb residents apprehended a Croat man in the act of looting a Serb-owned house. However, when they brought the perpetrator to a local police station, the officer on duty refused to pursue the case, saying he feared how his colleagues would react. In Ocestovo, former Sector South, on 25 January 1996, an elderly couple was robbed of firewood by uniformed men with a truck, minutes after the wood had been delivered to their house by an international humanitarian organization. The couple declined to report the incident to police for fear of possible reprisals. Another reliable report received from the former Sector South in late January recounted that a 75-year-old man was severely beaten by looters, who left him on a roadside. The same man reportedly had been forced a few weeks earlier to escort a truck with his looted livestock to Split. The looters used the man's presence to pass through Croatian police checkpoints and then left him at a railway station upon arrival in Split.

Despite the reduced levels of apparent human rights violations, there is still clear evidence of deficiencies in measures taken by the Government to ensure the security and well-being of the population which continues to reside in the former Sectors. The report by the Government issued at the end of January 1996 states that 3,500 policemen were deployed in those areas following the military's "Operation Storm" in August 1995, and further states that their number has not been reduced to date. However, reports received from United Nations and non-governmental sources indicate that Croatia's civilian police presence in the three former Sectors continues to be disturbingly thin, despite repeated statements by local officials who acknowledged the deficiency and told international observers that police protection would be reinforced imminently.

B. Investigation and prosecution

In the report by the Government, information is provided that, as of 19 January 1996, criminal proceedings were under way in Croatian military and civilian courts against 1,005 persons accused of having committed crimes during and after Operation Storm. Of these, 352 cases were in the stage of pretrial investigation, while 653 cases were in trial proceedings. According to the Government, 868 of the suspects or defendants in these cases are Croat, while 39 are Serb and 98 are of other national origins. The Government further reports

that, as of 9 November 1995, 80 persons then under proceedings were active members of the armed forces of the Republic of Croatia at the time they allegedly committed criminal acts. It will be recalled that international observers had reported that many of the persons seen committing criminal acts in the former Sectors were members of the Croatian armed forces. The Government has responded to this by saying that many alleged perpetrators were civilians misusing military uniforms.

1. Violation of the right to life

In my last report (S/1995/1051), I noted a statement by the Government of Croatia that 20 persons had been charged before judicial authorities, as of 31 October 1995, in cases concerning a total of 31 killings. The report by the Government now indicates that, following investigations, charges have been lodged against five additional persons suspected of killings committed in the former Sectors. In the widely publicized Varivode case, concerning the killings of nine elderly Serbs in that hamlet in the former Sector South on 28 September 1995, the Government now indicates that the trial of four defendants is drawing to its conclusion. In proceedings concerning the killings of seven Serbs in Gosic (former Sector South) on 27 August 1995, the Government reports that pretrial investigations are continuing against six persons, including two who are also defendants in the Varivode case, but formal charges have not yet been filed.

In the case concerning the killings of five elderly Serbs at Grubori on or about 25 August 1995, the report by the Government states that "the site of the crime was inspected by police on the same day on which it was reported by the United Nations Human Rights Action Team". This incident was discussed in my last report (para. 25). The statement in the report by the Government is contradicted, however, by members of the United Nations team, who report returning to the site the next day and learning from local residents that no Croatian police had visited the scene the day before.

The discrepancy, noted in my earlier report, between the number of apparent violations of the right to life recorded by United Nations investigators in the former Sectors - at least 150 - and the number of cases acknowledged by the Croatian authorities continues to be unaccountably large. While the Government has pursued prosecutions in the most dramatic cases, e.g. the massacre of nine Serbs at Varivode, and some others, there is little evidence of progress in resolving the many other reported cases of individual killings. The report by the Government indicates that 26 investigations have been completed to date, including one additional case resolved since 31 October 1995. The passage of time and difficulties in preserving evidence are likely to make many of the remaining cases virtually unresolvable.

2. Violations of property rights

As regards the reports of a massive campaign of arson conducted in the former Sectors North and South following Croatia's successful military operation of 4 to 7 August 1995, it was observed in my last report that the estimated

total number of houses destroyed by fire was in excess of 5,000. The report also contained statistics provided by the Government on this issue, which varied greatly from United Nations estimates:

> "2,787 arson cases have been registered. This includes 2,072 buildings partly affected by combat operations, whereas 715 were partly or wholly destroyed in deliberate actions. Criminal charges have been brought against 11 persons" (para. 15).

In the recent report by the Government, the Croatian authorities provide new statistics indicating that the number of homes partly or totally destroyed by deliberate acts of arson is now estimated to be 786. The Government has provided no new information on whether charges of arson have been brought against any but the 11 persons mentioned in its statistics from late 1995 or whether any convictions have been recorded in these 11 cases.

As regards looting, it was noted in my last report that abundant evidence indicated that looting had taken place in the former Sectors on an enormous scale. According to data provided at that time (31 October 1995) by the Government:

> "1,054 cases of looting have been established, of which 770 cases have been clarified, and 1,260 persons charged" (para. 18).

At that time, it was observed that a number of these 1,260 suspects were apparently charged with alleged acts of looting and then released.

The report by the Government provides new figures on measures taken in cases of looting. It states that a total of 1,600 cases of grand larceny have been reported, 1,151 of which have been solved, and 935 persons have been charged with the crime of aggravated larceny and brought to trial. The Government further notes that 41 criminal acts of robbery have been reported, 26 of which have been solved by the police, 55 persons have been criminally charged with robbery and 36 persons are now standing trial. The report by the Government does not explain the apparent anomaly that fewer persons in total are reported now to have been charged with larceny and robbery (935 + 55) than were reported to have been charged with looting in late 1995 (1,260). Further, no information has been provided by the Government on whether any convictions have resulted from criminal proceedings for looting, grand larceny or robbery.

III. HUMANITARIAN SITUATION IN THE FORMER SECTORS

Significant progress appears to have been made in the former Sectors in the provision of humanitarian assistance to needy persons, particularly Croatian Serbs, although the need for vigilance remains great. The Government indicates that it has undertaken a census of the former Sectors, which has identified 9,773 such persons living there following the summer's military operations.

As indicated in my previous report, the Croatian Ministry for Labour and Social Welfare has opened reception centres for sick and elderly persons in Petrinja, former Sector North, and Knin, former Sector South. According to the

report by the Government, 60 persons have been accommodated in the reception centre at Knin. The centres were opened by the Ministry in coordination with the Croatian Red Cross and the Croatian Delegation of the International Federation of Red Cross and Red Crescent Societies, pursuant to an agreement reached on 27 November 1995. The Government reports that it has also established social work centres in 15 locations throughout the former Sectors North and South, although it concedes that these centres suffer from a lack of qualified and other personnel. Similar centres also exist in the towns of Pakrac and Daruvar in the former Sector West.

According to the report by the Government, the State welfare agency has provided financial assistance to needy persons in the former Sectors, amounting to 200 kuna (approximately US$ 40) per household on three occasions, resulting in a total disbursement of some 2 million kuna (approximately US$ 400,000) to 9,751 households. The Government states that these beneficiaries have now been included in the country's regular welfare system. The report by the Government further states that some persons in the former Sectors were issued identification documents free of charge because of their income status.

However, sporadic reports continue to be received by the United Nations and other agencies of problems faced by Croatian Serbs in gaining access to basic humanitarian assistance. Issuance of basic identity documents in some municipalities continues to be slow and inefficient. In the Daruvar area, some elderly Croatian Serb residents have reported being turned away from medical facilities for lack of proper documents. Croatian Serbs have also reportedly had difficulty in recovering their farm equipment and livestock impounded by the Government during last summer's military operations. The Croatian authorities are said to have taken the position that the property's owners must first pay storage and feeding costs, which frequently approach the property's overall value. It has also been reported, in the former Sector West, that transport for Croatian Serbs from the outlying villages to the main population centres is hampered by bus routes that fail to pass through many Serb communities.

In my last report, I noted that the Croatian fund for pension and disability insurance announced it would distribute 666 pension allowances to Croatian Serb citizens, effective August 1995. The programme has encountered difficulty owing to the Croatian authorities' insistence in some cases that beneficiaries must first pay all arrears in pension contributions owed to the Government. Since the sums called for are prohibitive for many applicants, the latter continue to receive no pension benefits and frequently lack any other source of income.

IV. QUESTION OF THE RETURN OF CROATIAN SERB REFUGEES

At the end of 1995, the Croatian Government took a positive step towards encouraging the return of Croatian Serb refugees to the former Sectors when it suspended the time-limit within which Croatian Serbs would have been required to file claims to property abandoned during last summer's military operations. The Law on Temporary Take-Over and Administration of Property had previously given property owners until 27 December 1995 to file such claims or risk having their property handed over to displaced persons for their temporary use. While the

law provided that such takeovers would not prejudice ownership rights, the hasty procedure by which it would have permitted displaced persons in Croatia, a majority of whom are Croat, to move into properties owned by Croatian Serbs contributed to a climate widely perceived as hostile to the return of Croatian Serb refugees. The Croatian Government announced at the end of 1995 that it would seek to address the difficult issue of abandoned property in discussions with the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).

The report by the Government of Croatia indicates that the State Office for Displaced Persons and Refugees has received requests to return from nearly 5,000 people, and has approved return in 1,841 cases. The Office is said to be processing some 50 files a day. The Federal Republic of Yugoslavia (Serbia and Montenegro) estimates that up to 80 per cent of the publicly claimed 200,000 Krajina Serbs will choose to remain in the Federal Republic of Yugoslavia (Serbia and Montenegro). So far 14,000 of them have registered with the Croatian Bureau in Belgrade their wish to return.

However, few refugees appear actually to have returned to Croatia since the issuance of my last report. Both the Croatian liaison office in Belgrade and the Croatian Embassy in Budapest reportedly continue to be uncooperative and obstructive in handling requests for return. As of 31 January 1996, UNHCR reported that only some 200 refugees had managed to return to Croatia through its intervention, while several hundred more were believed to have succeeded in returning on their own. The Croatian Government continues to take the position that the question of the mass return of refugees will be addressed only through a specific agreement reached concurrently with the establishment of diplomatic relations between Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

As regards Croatian Serbs displaced from the former Sector West in May 1995 and subsequently resettled in the region of Eastern Slavonia (former Sector East), a Croatian government spokesman suggested in January 1996 that the terms of the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (S/1995/951, annex) provide for the return of these persons to Western Slavonia. The statement, however, was predicated on political considerations, with the official suggesting that an excess of Serbs in Eastern Slavonia could lead to political instability in that area.

V. CONSTITUTIONAL RIGHTS OF THE REMAINING SERB POPULATION

In my last report, I noted the decision of the Croatian Parliament taken in September 1995 to suspend temporarily several articles of a special constitutional law affecting the rights of national minorities. Among other provisions, these articles provided for special self-governing status for districts predominantly populated by a national minority, and they granted special rights of representation in the national Government to minority groups constituting more than 8 per cent of the country's population.

The Government argues that this decision is justified by the fact that the Serb population in Croatia decreased by over 200,000 persons last summer when

local Serbs fled from Croatia to Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) as a result of the military operations. At the same time, however, the Government maintains that the rights of Serbs remaining in Croatia are protected primarily by the Constitution itself and by other pertinent legislation, as are the rights of all national minorities. The Government points to article 15 of the Croatian Constitution, which reads in full:

> "Members of all nations and minorities shall have equal rights in the Republic of Croatia. Members of all nations and minorities shall be guaranteed freedom to express their nationality, freedom to use their language and script and cultural autonomy."

The Croatian Government's decision to revoke certain citizenship rights, notably those related to political representation, previously enjoyed by Croatian Serbs now residing in the Federal Republic of Yugoslavia (Serbia and Montenegro) stands in marked contrast to the policy followed with respect to persons of Croat national origin residing in Bosnia and Herzegovina. These persons, who are considered under Croatian law to be citizens of Croatia, enjoyed full voting rights in the national elections held in Croatia on 29 October 1995, and are represented in the Croatian Parliament.

As regards the establishment of a provisional human rights court, which is one of the suspended provisions of the above-mentioned constitutional law on the rights of national minorities, the Government insists that this project is still under way. The report by the Government states that legal experts from the Council of Europe have recently been called in to provide advice on the establishment of this court. At the same time, however, the Government has called attention to Croatia's ratification in 1995 of the Optional Protocol to the International Covenant on Civil and Political Rights, which permits individuals to communicate to the Human Rights Committee alleged violations of their rights under the Covenant.

VI. DETENTION OF SERBS FROM THE FORMER SECTORS

On 31 December 1995, the President of Croatia issued a decree granting amnesty to 451 Serbs held in prison since last summer on charges of "armed rebellion" for their alleged military support of the so-called "Republic of Serb Krajina". 1/ According to ICRC, 103 persons were released immediately from prison while 348 others were transferred to the Gasinci refugee camp in eastern Croatia, where they were interviewed by ICRC officials. In accordance with their wishes, 306 of this latter group were transported with ICRC assistance to the Federal Republic of Yugoslavia (Serbia and Montenegro), while the remainder were released in Croatia. The decision of the Croatian Government to grant amnesty to these individuals was noted with appreciation by the Security Council in its presidential statement of 8 January 1996. The decision to grant amnesty followed an appeal made to the Government by ICRC on 22 December 1995 to release the detainees on the basis of the Second Additional Protocol to the Geneva Conventions, article 6, paragraph 5 of which states that at the end of hostilities "the authorities in power shall endeavour to grant the broadest

possible amnesty" to persons detained in connection with a non-international conflict.

According to ICRC, another 389 persons remain detained in a total of 15 detention centres in Croatia on charges arising from their alleged participation in the conflict. Access to these persons for ICRC and other international organizations has generally been unrestricted in conformity with Croatian law, and there have been only a few alleged cases of mistreatment. International observers engaged in trial monitoring have raised the concern that many detainees have inadequate legal representation or indeed are unrepresented. The Government's response to this assertion has been to state that, in conformity with Croatian law, defendants will be provided with a court-appointed defense lawyer at their request only if a sentence of 10 years or more may be imposed for the crime with which the defendant is charged.

VII. COOPERATION WITH THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

The Prosecutor of the International Tribunal reports that he has had regular high-level contacts with the Croatian authorities, and maintains a liaison office in Zagreb. Substantial investigations have already been conducted with the cooperation of the authorities in Croatia, and relevant information has been provided to the Prosecutor's office. Such activity is expected to continue.

Despite certain reports, it is not the policy of the Prosecutor's office to conduct joint investigations with local authorities, nor will the Prosecutor of the International Tribunal attempt to investigate all war crimes perpetrated on Croatian territory. Subject to the ability of the International Tribunal to assert its primacy, the Croatian national courts, which have concurrent jurisdiction over such crimes, will be expected to play their part in bringing those responsible to justice.

In recent weeks a number of discussions have taken place following the reaffirmation in the Dayton agreement of the commitment of all parties towards full cooperation with the Tribunal. As a result, the Prosecutor is optimistic that the Croatian authorities will not obstruct, and will actively assist, his efforts to ensure that persons indicted for serious violations of international humanitarian law will be brought before the Tribunal for trial in the near future. Arrangements are currently being made to secure the appearance of one such person.

Croatian legislation providing for full cooperation with the International Tribunal has also been prepared, and its introduction is reported to be imminent.

VIII. OTHER ISSUES

In my last report, I noted concerns which had been raised about the conduct of Croatian authorities towards refugees who have been living at the Kupljensko camp near Vojnic, former Sector North, since early August 1995. Between 8,000 and 9,000 Bosniacs from the Velika Kladusa area of Bihac, north-west Bosnia and Herzegovina, remained in the camp as of 31 January 1996, while some 10,000 former residents of the camp had repatriated.

Material conditions have improved somewhat in the camp in recent months, thanks largely to assistance provided by international humanitarian organizations. Nevertheless, provisions for shelter remain primitive, and the winter cold is placing children's health in particular at great risk. The camp continues, moreover, to be rigidly controlled in a near prison-like manner by Croatian Special Forces (belonging to the police) which surround it, placing additional strains on the refugees. One refugee was reportedly shot and killed by police earlier this year when attempting to re-enter the camp through an unofficial entry point. The tension in Kupljensko camp has increased recently with the arrest on 1 February 1996 of 69 refugees, 46 of whom were eventually sent back to Velika Kladusa against their will.

Croatia continues to deny refugee status to residents of the camp, and returns to Bosnia and Herzegovina have slowed recently to fewer than 20 people a day. The difficult situation in Kupljensko thus remains a matter of concern.

IX. CONCLUDING OBSERVATIONS

The report by the Government of 28 January 1996 constitutes a welcome, if incomplete, statement of intended policy and operational initiatives to improve Croatia's human rights record. It is clear that international concern and attention in this area will not dissipate until there is evidence that the various policy initiatives have been implemented. It is gratifying that the incidence of human rights violations noted in the past two months in the former Sectors in Croatia has been greatly reduced from the levels recorded in the months immediately following last summer's military operations. The potential for recurrence, however, remains substantial, and in this regard the continuing absence of a strong and responsible local police presence remains a cause for concern. It is desirable that the Government of Croatia undertake all possible measures to ensure the security of the Serb population that remains in the former Sectors.

Information provided by the Government of Croatia indicates that a large number of judicial proceedings have been instituted with respect to crimes and human rights violations that were allegedly committed, mostly against Croatian Serbs, in the aftermath of the military operations. However, many reported cases of killings are unresolved, and there is scant evidence of trials concerning acts of arson or looting being brought to a conclusion. It will be important to continue to monitor the judicial process to ensure that the widespread criminality documented by international observers last year does not go unredressed.

Continued vigilance in respect of the humanitarian needs of the elderly Croatian Serbs who remain in the former Sectors is essential. The Government of Croatia is to be commended for the steps it has taken, albeit belatedly, in this regard. However, there continues to be cause for concern that resources, both human and financial, made available for this purpose are insufficient.

Little progress has been made on the return of Croatian Serb refugees to Croatia. The Government indicates that this matter will be addressed principally in the course of initiatives to be taken for the normalization of relations between Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). However, this should not delay the return of persons who satisfy the legal conditions necessary for immediate return. Disturbing reports continue to be received that government offices responsible for expediting this procedure are conducting their work in an uncooperative and obstructive manner.

The decision of the Government of Croatia to grant amnesty to 451 Serbs alleged to have taken up arms in support of the "Republic of Serb Krajina" was an important step towards the creation of conditions in which former combatants will be able to live together in Croatia in peace. However, 389 persons remain in detention in Croatian prisons, charged with crimes allegedly committed during the conflict. It is to be hoped that Croatia will respond to international calls to ensure that these persons are granted fair judicial proceedings and, indeed, that due consideration will be given to granting them amnesty, in accordance with the principles of international law.

With the termination of the UNCRO mandate on 15 January 1996, the number of international personnel in Croatia (outside the former Sector East) with a mandate to monitor human rights has been drastically reduced. As noted above, such personnel are now limited to a small team of officers from UNHCR and two human rights officers from the Centre for Human Rights working in support of the Special Rapporteur and the Expert on Missing Persons, as well as some representatives of international NGOs. The ability of the United Nations to assess further developments on the important issues raised in this report will accordingly be very limited.

Notes

1/ Although the decree named 455 persons to be released, the International Committee of the Red Cross concluded that 4 names were duplicated on the list.